

Application No. 10/669,953
Amendment Dated March 26, 2009
After Final Office Action of December 24, 2008

Docket No.: 00597/0200034-US0

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings is a new Fig. 3. Support for the new Figure is found at page 12, lines 16-25 of the Specification.

Attachment: New drawing sheet

REMARKS

Claims 1, 2, 4 and 5 are active in the application.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. § 112 for use of the term "a third multi-position valve for selectively supplying CO₂ gas into each of the incubation spaces". The element objected to has been amended to "valve apparatus." This would cover the two valves 9A and 9B as shown and also a "multi-position valve." This overcomes the rejection.

Claims 1, 2, 4 and 5 are rejected as being unpatentable over the combination of Swan, et al., U.S. 5,090,617 in view of the two IEEE publications to Phillips or Wheeler, and further in view of Kobayashi, et al., JP 63-108262. An alternate ground of rejection is based on the Swan patent and the two IEEE publications in view of Dutton, U.S. 4,701,415 and taken further in view of Gross, et al., U.S. 5,149,654 and Stout, U.S. 3,464,388.

Claim 1 is the main claim. Claim 1 is proposed to be amended to recite the housing for the incubator that has (at least) two separate compartments (S1 and S2), each having its own door. Support for this is found at page 12, lines 16-25 of the Specification. This paragraph of the Specification is amended to correspond to a new Fig. 3, which is submitted to correspond to the subject matter of amended claim 1. No new matter has been added.

Applicant first notes that five or six references are patched together to form the rejection. This is an indicia that what applicant claims is either a new and novel device that performs an advantageous function, or a device that is made much simpler than one made by the patchwork apparatus constructed by the Examiner.

Applicant addresses the prior art references Gross and Stout that are pertinent to the amendments made to claim 1. Applicant repeats and incorporates by reference the arguments previously presented relative to the other references.

Gross is relied on (Office Action, page 5) for showing an incubator having a plurality of compartments. This is correct. But the Gross incubator does not have a separate door for each compartment as set forth in amended claim 1.

Stout is relied on (Office Action, page 5) for teaching that it is conventional to control the conditions in a plurality of incubation devices, referring to Fig. 2 of that patent. In Stout the air for which temperature and humidity are controlled by the atmosphere generator C is supplied separately to each of the independent incubators B. That is, the invention is one incubator divided into several independent compartments, each having its own door. Stout has separate incubators. Stout has a first heater 16 provided in the atmosphere generator C and a second heater 12 provided in the incubator B. The heaters 16, 12 are controlled by the controller 18. But the controller 18 does not control the heaters 16, 12 by feedback of the measurement of the temperature in the chamber 13. Also, the apparatus of Stout becomes large because a plurality of independent incubators B are connected. Also, because the incubators B are independent, it is more difficult to make the temperature the same in the chambers 13 of the independent incubators.

On the other hand, in the present invention as set forth in amended claim 1, two incubation spaces 1S and 2S are made by dividing the inside of the housing by the partition wall. Therefore, the temperature of each of the incubation spaces 1S and 2S can be more accurately controlled to be the same.

For example, when an experiment is to be conducted at the same temperature and different CO₂ concentration, by the present invention the experiment can be done accurately. But in Stout, it will be difficult because in Stout the CO₂ concentration is not controlled.

As described above, the present invention in which a plurality of incubation spaces are made by dividing the inside of an incubator in a single housing into a plurality of individual compartments each having a separate door, has an advantage over Stout in which a plurality of independent incubators are connected.

Accordingly, claim 1 sets forth a novel and advantageous apparatus that is neither shown nor suggested by the prior art. Therefore, claim 1 and its dependent claims are patentable and should be allowed.

Claims 1, 2, 4 and 5 are further rejected as being unpatentable over the Vision Scientific catalog for the CO₂ incubator model VS-9108 MS in view of the two IEEE publications taken in

view of Kobayashi or alternatively, further in view of the Dutton patent, to which are added the patents of Gross and Stout.

The comment made above relative to the use of a larger number of references patched together to make the rejection is repeated here.

Here also the arguments previously made relative to the various prior art references and their combination is repeated. Again, the focus is on the proposed amendment to claim 1 to which the Gross and Stout patents apply. The arguments made above with respect to these two patents relative to amended claim 1 are repeated. The Vision Scientific (CO2 Incubator Model VS-9108MS) publication also does not show a single incubator housing divided into two separate compartments each having its own door. It shows an incubator housing with one door. There are no separate compartments. Also repeated is the argument that the need to combine a large number of references is an indicia of patentable invention.

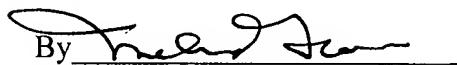
Claim 1 clearly is patentable over the combination of references patched together to make this rejection as are its dependent claims.

The amendment should be entered since it clearly places the application in condition for allowance. If the amendment is not entered as placing the application in condition for allowance, then its entry is requested for purposes of appeal.

Prompt and favorable action is requested.

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Respectfully submitted,

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